

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-621

August 25, 1998

PUBLIC UTILITIES COMMISSION
Customer Net Energy
Billing (Chapter 313)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT, Commissioner

I. INTRODUCTION

In this Notice, we initiate a rulemaking to establish requirements and standards for customer net energy billing after the introduction of retail access.

During its 1997 session, the Legislature fundamentally altered the electric utility industry in Maine by deregulating electric generation services and allowing for retail competition to begin on March 1, 2000.¹ In enacting these changes, the Legislature recognized that the changes in the industry structure would necessarily impact the means by which the state has traditionally implemented its energy policy. For these reasons, the Legislature included provisions in the restructuring act to ensure that its policies are continued after the start of retail access. Among such provisions is a section on renewable resources, 35-A M.R.S.A. § 3210, in which the Legislature states:

In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable and indigenous resources, it is the policy of this state to encourage generation of electricity from renewable resources and to diversify electricity production on which the residents of this State rely²

¹An Act to Restructure the State's Electric Industry (the Act), P.L. 1997, ch. 316 (codified as Chapter 32, Title 35-A M.R.S.A. §§ 3201-3217).

²To implement this policy, the Legislature required the Commission to adopt rules to implement a 30% renewable resource portfolio requirement and a program for voluntary contributions to fund renewable resource research and development.

The Legislature also recognized that industry restructuring would create implications for existing contractual relationships between qualifying facilities (QFs)³ and utilities. P.L. 1997, ch. 316 §§ 5, 6, 7, 8, 9. As a result of various legislative directives in this area, the Commission opened a rulemaking to review its current regulations regarding QFs (Chapter 36). Among the then existing provisions of Chapter 36 was a provision providing QFs with a capacity of 100 kW or less with the option to buy and sell electricity to a utility on a net energy basis. In amending Chapter 36⁴ to be consistent with the changes in industry structure, we modified the net energy billing provision to address issues relating to existing contracts that extend beyond March 1, 2000. See Order Adopting Amended Rule and Statement of Factual and Policy Basis, Docket No. 97-794 (March 10, 1998). However, in addressing new net energy billing arrangements entered after the beginning of retail access, we decided that such rules would be more appropriately placed outside the QF regulations. In our Chapter 360 Order Adopting Amended Rule, we discussed in some detail the nature of the provisions that we would propose in a separate rulemaking:

b. New Arrangements After Retail Access

The net energy billing provision was originally included in Chapter 36 as a means of reducing costs for very small QFs so their power could economically be sold to utilities. This was done by avoiding the costs of a second meter and, instead, using a single meter that registered power flows in both directions. The original rationale for net billing, however, is no longer applicable as we enter a restructured environment for several reasons. First, CMP has routinely installed a second meter for purposes of measuring usage for retail sales tax purposes so that the intended cost savings have not occurred. Second, and more importantly, the concept of QFs' generating power and selling it to utilities at their avoided cost is rendered obsolete by a restructuring of the industry that allows for retail competition and restricts utilities from engaging in the generation and sale of electricity. We note that our changes to Chapter 36 are

³QFs are generally renewable power producers under 80 megawatts or cogenerators that meet specified efficiency standards.

⁴Chapter 36 is now Chapter 360.

essentially to deal with the remnants of QF contracts and policies that extend beyond the initial date of retail access; when all existing QF contracts expire, there will no longer be any need for Chapter 36.

After considering the comments on this topic, we agree with Messrs. Talmage and Inoue and other commenters that net billing has become more than simply a way of reducing metering costs; rather, it has developed into a means of encouraging the use of small-scale renewable technologies designed primarily to serve the customer's own electricity needs. The promotion of such an outcome is consistent with legislative policies favoring renewable generation and energy efficiency. 35-A M.R.S.A. §§ 3210, 3211. As a result, our view is that a long-standing billing and metering practice that facilitates customers' abilities to meet their own loads through renewable resources is not a practice that should be eliminated solely as a result of industry restructuring. Instead, the practice should be modified so as to be workable in a restructuring environment.

For the reasons stated above, however, new net billing arrangements after the initiation of retail access should not be included in a rule governing QFs and their power sale relationships with utilities that will phase-out over time as existing contracts terminate. It is more appropriate that such a provision be included in a rule generally governing the promotion of renewable resources in a restructured industry. We therefore have not included in the amended Chapter 36 a provision for new net billing arrangements after the advent of retail access; we will instead include such a provision in our rule on renewable resources, that will be promulgated pursuant to 35-A M.R.S.A. § 3210. This provision will be designed to facilitate the use of small-scale renewable generation to serve customers' own needs.

The new net billing provision that we anticipate including in the renewable

resource rule will be the annualized methodology, proposed by Messrs. Talmage and Inoue and supported by Mr. Lord and the Public Advocate, in which usage and generation are netted against one another on a rolling basis for a 12-month period. Under this approach, customers can store, or bank, their generation from month-to-month for one year. After the end of the year, neither the T&D utility nor any generation provider would be obligated to pay for any net generation from these customers. This approach has many advantages. For example, the annual netting will facilitate certain renewable technologies (such as small hydro and wind power) whose output varies greatly over the year. The absence of any power sales removes any incentive to size facilities to generate more power than necessary to serve the customer's own electricity requirements. It also avoids the anomalous result of a T&D utility that is not in generation business actually paying a customer if excess power is generated. Finally, the approach will be relatively easy to administer and will avoid complexities involved in requiring the purchase of very small amounts of energy.

The specific aspects of the annualized net billing provisions that we intend to include in the renewable rule are discussed below. To qualify for net billing, a customer will have to employ one of the technologies or fuel types listed in section 3210 and have a maximum installed capacity of 100 kW or less. There is no need to reduce the capacity limit because the absence of the sale of power should ensure that facilities are installed to meet customer loads rather than for energy sales. Additionally, we would not restrict availability to residential customers; there is no reason to exclude small businesses that wish to generate their own electricity from taking advantage of net billing.

We will not limit net billing to the generation portion of the electricity bills, but will apply it to T&D charges only to the extent they are usage sensitive. This

approach mirrors the results of a customer who invests in energy efficiency. Customers may use their own generation to offset the total price of electricity but must pay any fixed charges designed to cover the costs of T&D system to which the customer remains connected.

We will also include a provision similar to that for existing contracts that allow customers the option of voluntarily arranging for net billing from a competitive provider. If a net billing customer takes service from the standard offer, the provider(s) will be required to provide generation on a net basis.

Finally, we will maintain the current provisions that net billing customers will not be charged the costs of a second meter, if one is necessary, and that net billing service will be pursuant to a Commission-approved standard contract.

To conclude, our intent is to include in the final renewable resource rule a net billing provision as described above. We will, however, include the provision in the proposed rule and obtain comments to ensure that the specific aspects of the provision are workable and to consider variations that might be more desirable.

Id. at 23-25 (footnotes omitted).⁵ The provisions of the proposed rule are consistent with the discussion quoted above.

II. DISCUSSION OF INDIVIDUAL SECTIONS

A. Section 1: Purpose

The proposed rule summarizes the purpose of the Chapter as implementing the State's policy to encourage generation from renewable resources through the adoption of requirements and standards for customer net billing.

⁵The quoted language states that the net billing provisions would be included in a renewable resource rule, along with provisions governing the portfolio requirement. Because the portfolio requirement rules are major substantive, we have decided to place the net billing provisions in a separate rule.

B. Section 2: Definitions

This section contains definitions of terms used throughout the proposed rule. The definitions are self-explanatory. We note that the definition of net energy specifies that the difference between kilowatt-hours consumed and kilowatt-hours generated is determined as if measured by a single meter capable of registering flow in two directions. This language is intended to clarify that utilities may use two meters but that, for billing purposes, the amounts charged or credited must be determined as if a single meter is used.

C. Section 3: Annualized Customer Net Billing

This section contains the substantive provisions for net billing. Sections 3(A) and (B) specify that, after the beginning of retail access, a customer that uses a renewable resource with a capacity of 100 kW or less to serve its own needs has an option to be billed on a net energy basis. To be consistent with statutory policy, renewable facilities for this purpose include those listed in 35-A M.R.S.A. § 3210(2)(C).

Section 3(C) of the proposed rule states that the renewable facility must be located on the customer's premises and used to meet the customer's own load. This requirement is consistent with the goal of net billing, as discussed above, to encourage the use of small renewable facilities to serve customers' own needs.

Section 3(D) contains the requirement for utilities to bill on an annualized net energy basis if a qualifying customer chooses. The section implements the annualized approach by allowing customers to roll-over generation in excess of their needs (in the form of kilowatt-hour credits) to be applied against usage in following months. The provision further specifies that customers are billed only for usage that exceeds their own generation during the billing period plus any credits from prior billing periods. Customers may accumulate unused kilowatt-hour credits for a 12-month period; at the end of this period any unused credits will no longer be available to offset usage and no compensation will be paid for excess credits. Finally, the section specifies that the net billing offset applies only to kilowatt-hour charges and customers remain responsible for all other charges.

Section 3(E) provides that net billing customers have the option of obtaining generation service from any competitive provider that is willing to do so on a net billing basis. If the customer takes standard offer service, the standard offer

provider is required to provide generation service on a net energy basis.

Section 3(F) states that a utility may install a second meter, but may not charge a net billing customer for the additional costs.

Section 3(G) requires utilities to file a standard contract for net billing customers. A standard contract should simplify the administration of net billing and make it easier for customers to participate.

D. Section 4: Waiver or Exemption

This provision contains the Commission standard provision for waivers or exemptions of the provisions of the Chapter that are not inconsistent with its purposes or those of Title 35-A.

III. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on September 24, 1998 at 9:00 a.m. in the Public Utilities Commission hearing room.⁶ Written comments on the proposed rule may be filed until October 5, 1998. However, the Commission requests that comments be filed by September 21, 1998 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 98-621, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Commission if you need special accommodations to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

⁶The Commission will hold three rulemaking hearings related to renewable resources in the following order: portfolio requirement (Docket No. 98-619), voluntary research and development fund (Docket No. 98-620), and net energy billing (Docket No. 98-621).

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact and all other implications of the proposed rule.

The Administrative Director shall send copies of this order and proposed rule to:

1. All electric utilities in the State;
2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
3. All persons on the Commission's list of persons who wish to receive notice of all electric restructuring proceedings;
4. All persons on the service list or who filed comments in the Inquiry, Public Utilities Commission, Inquiry into a Renewable Resource Portfolio Requirement, Docket No. 97-584;
5. All persons on the service list or who filed comments in the Inquiry, Public Utilities Commission, Inquiry into an Inquiry into Effects of Restructuring on Contracts between Qualifying Facilities and Electric Utilities, Docket No. 97-497;
6. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
7. The Executive director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Accordingly, we

O R D E R

1. That the Administrative director send copies of this Notice and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule.
2. That the Administrative Director send a copy of this Notice of Rulemaking to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine this 25th day of August, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent